IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 6 OF 2005.

Nandkishore L. Mehta & Ors. ... Petitioners.

V/s.

Mehul J. Shah. ... Respondent.

WITH

MISC. CIVIL APPLICATION NO. 7 OF 2005.

Nandkishore L. Mehta & Ors. ... Petitioners.

V/s.

Nipa D.Shah. ... Respondent.

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MISC. CIVIL APPLICATION NO. 8 OF 2005.

Nandkishore L. Mehta & Ors. ... Petitioners.

V/s.

Hina S. Desai. ... Respondent.

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MISC. CIVIL APPLICATION NO. 9 OF 2005.

Nandkishore L. Mehta & Ors. ... Petitioners.

V/s.

Shantaben D. Shah. ... Respondent.

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MISC. CIVIL APPLICATION NO. 10 OF 2005.

Nandkishore L. Mehta & Ors. ... Petitioners.

V/s.

Ushaben A. Shah. ... Respondent.

AND

MISC. CIVIL APPLICATION NO. 11 OF 2005.

Nandkishore L. Mehta & Ors. ... Petitioners.

V/s.

Sanjay A. Desai ... Respondent.

Shri A.K.Abhyankar with Vineet B. Naik i/b M/s.Pravin Mehta & Mithi & Co. for Petitioners in all MCAs.

Shri Rajiv Subramaniam with Mrs. Nipa S. Gupta for the respondent in all MCAs.

CORAM: A.S.OKA, J.

DATED: 25th February, 2005.

P.C.:

1. All these applications were heard on Tuesday 22nd February, 2005. These applications can be disposed of by a common Judgment and Order as facts of each case are almost identical.

2. For the sake of convenience, reference is made to the facts of the case of Misc. Civil Application No.6 of 2005. The prayer in all the applications is for transfer of 6 suits filed by the Respondent in each Miscellaneous Application which are pending in the City Civil Court at Mumbai to this Court wherein six different suits filed by the Petitioners against each Respondent in misc. applications are pending. It appears that the Respondents in misc. applications are members of same family.

3. Case of the Petitioners is that they are carrying on business of building construction. The Petitioners have undertaken development of a property situated at J.V.P.D. Scheme, Ville Parle, Mumbai. An agreement for sale is entered into by the Petitioners in favour of the Respondent in every Misc. Application for sale of certain flats in the property in question. The suits filed by the Respondent in the Misc. Applications in the City Civil Court are for praying following reliefs.

(a) That it be declared :

(i) That in the matter of sale of the said Flat Defendants are 'Promoters' within the meaning of the said Act;

(ii) That Defendants are bound and liable to complete construction of the said building and handover possession of the said Flat to the Defendants in terms of the said Agreement and in accordance with plans as disclosed is to be Plaintiff;

(iii) That in the event of it being found that Defendants have revised and/or altered the plans. The Plaintiff is entitled to the possession of the said Flat constructed on the basis of the revised plan;

(iv) That in the event of it being held that the Flat as agreed to be provided tod the Plaintiff was not available by reason of construction carried out on the basis of revised plan, then it be declared that Defendants are not entitled to proceed with the construction of the said building on the basis of the plans revised and/or altered without the concurrence and consent of the Plaintiff.

(b) That the Defendants be ordered and directed by a Mandatory Order to hand over the said Flat duly completed to the Plaintiff in terms of the said Agreement."

4. Certain orders were passed on the notices of motions filed in the said suits. It is the case of the Petitioners that there was a compromise between the parties and the consent terms were drawn. It is the case of the Petitioners that acting upon the compromise, certain Pay Orders were obtained by them for

handing over the same to the Respondents in Misc. Applications. According to the Petitioners, the Respondents backed out and therefore, Notices of Motions were taken out by them in the pending suits in City Civil Court for recording compromise. The said Notices of Motions came to be rejected. The orders passed in the said Notices of Motions have been challenged by the Petitioners by filing Civil Revision Applications which are pending in this Court.

5. The Petitioners filed six separate suits in this Court against the Respondents in Misc. Applications praying for following reliefs.

> (a) that it be declared that the Agreement arrived at between the Plaintiffs and the Defendant as recorded in the "Consent Terms dated 27.6.2003" being Exhibit "G" hereto is valid, subsisting and binding on the Defendant and that the said Agreement for Sale of Flat dated 21st February, 1990 being Exhibit "A" hereto stands superseded and/or novated as in the manner and on the terms as contained in the said Consent Terms dated 27.6.2003.
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> (b) that the Defendant be ordered and directed to perform specifically the said Agreement between the Plaintiffs and the Defendant as contained in the said Consent Terms dated 27.6.2003 being Exhibit "G" hereto;

> (c) that for the aforesaid purpose this Hon'ble Court may be pleased to pass such further and other orders and issue directions as may be necessary;
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> (d) that pending the hearing and final disposal of the Suit, the Defendant, his servants and agents be restrained by an Order and Injunction of this Hon'ble Court from in any manner acting contrary to the said Agreement as contained in the Consent Terms dated 27.6.2003 or from dealing with, disposing of, alienating, encumbering or creating any third party rights in the said premises or under the said Agreement for sale of Flat dated 21st February, 1990 in favour of any other person or persons;"

6. The contention of the Petitioners is that the disputes arising in the said suits filed in Bombay High Court as well as suits pending for consideration in the City Civil Court are one and the same and the parties are the same. It is contended that even the evidence in all these suits will be common and for effective adjudication of the suits, it is necessary that the same are heard by one and the same Court. There is an affidavit in reply filed by the Respondent opposing the prayer for transfer on various grounds.

7. Shri Abhyankar, the learned counsel for the Petitioners has relied upon Judgment and Order

dated 25th January, 1999 passed by this Court in Misc. Civil Application No.80 of 1998 as well as Judgment and Order dated 12th August, 2004 passed by this Court in Misc. Civil Application No.55 of 2003. Relying upon the said Judgments and Orders, Shri Abhyankar submitted that considering that some of the issues in the suits are common, parties being the same and evidence being common, it is necessary to transfer suits pending in the City Civil Court to this Court to avoid multiplicity of proceedings. He has invited my attention to the prayers made in Notices of Motions recently taken out by the Respondents in Misc. Civil Applications in their Suits. It is submitted that reliefs claimed in the said Notices of Motions are granted, it will affect the merits of the pending suits filed by the Petitioners in this Court. He contended that all suits in the City Civil Court are fixed for settlement of issues. Shri Subramaniam, the learned counsel appearing for the Respondents submitted that suits filed in the High Court are not ready for hearing. He has strongly opposed the prayer made by the Petitioner.

8. It is to be noted here that the suits which are pending in this court as well as in the City Civil Court are not ready for hearing. It is also to be noted here that issues are not framed in the suits which are pending in the City Civil court and the notices of motions recently taken out by the Respondents will have to be heard by City Civil Court before issues are framed.

9. There is some substance in the submission of Shri Abhyankar that some of the issues involved in both the suits may be common and that some of the evidence may be common. However, the suits, both in the High court and City Civil Court are not likely to be heard in near future. Therefore, at this stage, I am not inclined to pass order of transfer.

10. The grievance made by the Shri Abhyankar about the prayers made in Notices of Motion recently taken out by the Respondents is not really relevant for the prayer for transfer. Notices of motion taken out by the Respondents will be heard on its merit and it will be open for the City Civil Court to consider the effect of the

pendency of suits in the High Court while deciding the Notices of Motions. The reliance placed by Shri Abhyankar on the two Judgment of this Court in Transfer Application will not help the Petitioners. The orders of Transfer have been passed in the facts of those cases. In one of the cases the suit filed in City Civil Court was ready for hearing.

11. It is also to be noted here that legality and validity of law by which original jurisdiction of this court is abolished has been upheld by the Apex Court and there is some possibility that the said legislation may come into force in near future. In such an event the suits filed by the petitioners in this Court are bound to be transferred to the City Civil Court. Considering all these factors, no case is made out for passing an order of transfer at this stage.

12. Subject to what is stated above, the Misc. Civil Applications are rejected. No order as to costs.

13. At this stage, Shri Naik prays that

ad-interim order passed by this Court on 25th January, 2005 to be continued for a reasonable time. Prayer is rejected.

14. Parties to act upon an authenticated copy of this order.

JUDGE